

**DAVID A. NELSON**  
Claimant

**KANSAS DEPARTMENT OF TRANSPORTATION**  
Respondent

**STATE SELF INSURANCE FUND**  
Insurance Carrier

- (1) Whether claimant met with personal injury by accident arising out of and in the course of his employment; and
- (2) Nature and extent of claimant's disability.

The Special Administrative Law Judge found claimant suffered an occupational disease, not accidental injury, arising out of and in the course of his employment. Respondent has cast the issue as one relating to accidental injury because claimant alleged accidental injury. Respondent argues that it was an error for the Special Administrative Law Judge to find an occupational disease when none had been alleged. Respondent then argues the evidence does not establish an accidental injury arising out of and in the course of employment. The Appeals Board concludes it was not an error for the Special Administrative Law Judge to treat the claim as one for an occupational disease even though an accidental injury had been alleged. The Appeals Board, therefore, considers the issue on appeal to be properly described as one whether there was an occupational disease arising out of and in the course claimant's employment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant has not established he sustained either a permanent injury or a permanent occupational disease arising out of and in the course of his employment. He has established a temporary condition only. He is entitled to medical treatment for that temporary condition, but no permanent disability benefits.

The Special Administrative Law Judge found that claimant proved that his exposure to gasoline and cleaning solvents in his work caused him to have an allergic reaction which included a rash, hives, headaches and an aggravation of a sinus condition. The Special Administrative Law Judge also found that claimant's exposure was peculiar to his employment. The Special Administrative Law Judge, therefore, found claimant suffered disablement by occupational disease.

The Appeals Board agrees with those findings, but concludes that the conditions suffered as a result of the exposures at work were temporary only. Claimant has failed to establish that he suffers any permanent conditions as a result of the exposures at work. The only testimony on this question is that of Dr. James H. Ransom, the treating physician. Dr. Ransom is board certified in allergy and immunology. He describes claimant's condition, urticaria, as a pre-disposition plus triggering factors. He testified that there were likely multiple triggering factors that could have produced the hives, including the exposure to solvents at work. Claimant has failed, however, to provide any evidence that predisposition or an underlying condition was in any way caused by the exposures at work. Claimant's circumstances are similar to those of an employee who comes to his employment with a preexisting physical injury. If the work, thereafter, causes pain the employee may be entitled to treatment for those symptoms. If, however, no additional injury is caused, he would not be entitled to permanent disability benefits. When Dr. Ransom saw claimant in January 1992, claimant had been free from hives since he left his employment in July 1991. As it relates to the sinus condition, the claimant suffers the same defect. Claimant had sinus headaches as a result of exposure at work, but there is no evidence that he suffered any permanent injury or contracted any permanent occupational disease.

Claimant is entitled to benefits for the temporary condition but is not entitled to benefits for permanent disability. The temporary benefits include the medical benefits ordered as part of the Award by the Special Administrative Law Judge. In addition, the evidence shows Dr. Ransom took claimant off work for two weeks. Claimant would, therefore, be entitled to one week of temporary total benefits. K.S.A. 1991 Supp. 44-510c(b)(1).

Claimant's request for temporary total benefits after he left employment for respondent is denied. The record contains no evidence he was unable to perform substantial and gainful employment. The evidence establishes he could have remained employed with minor accommodations which respondent was willing to make, claimant did not advise respondent he was leaving because of his sinus or hives, and claimant had reasons other than the sinus or hives for wanting to leave employment. Under these circumstances, the Appeals Board finds he was not temporarily totally disabled at the time he left his employment.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated August 19, 1994, should be, and the same is hereby, modified. Claimant is entitled to medical benefits and one week of temporary total disability benefits.

Medical benefits incurred by claimant to diagnose and treat the physical effects of this temporary occupational disease are ordered by paid respondent.

Respondent is to pay claimant for the week of temporary total disability or \$289.00.

Future medical benefits are denied. Unauthorized medical expense up to \$350.00 is ordered paid on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Curtis, Schloetzer, Hedberg, Foster & Associates	
Transcript of Regular Hearing	\$225.50
Deposition of Don Taylor	\$177.80
Deposition of Roy Condley	\$ 62.20
Deposition of David Robert Barry, M.D.	\$176.40
Deposition of James H. Ransom, M.D.	\$298.60
Deposition of Monty D. Longacre	\$204.30
Appino & Biggs Reporting Service	
Deposition of Leonard Anderson	\$163.40
Deposition of David A. Nelson	\$190.30
Deposition of John Babcock	\$ 77.30

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1996.

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BOARD MEMBER

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c: Lelyn J. Braun, Topeka, Kansas  
Jeff K. Cooper, Topeka, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director